

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT, LLC.

Relief Defendants.

**RECEIVER'S UNOPPOSED VERIFIED MOTION FOR  
APPROVAL OF SALE OF REAL PROPERTY LOCATED IN TAZEWELL, TN**

Pursuant to 28 U.S.C. § 754, 28 U.S.C. §§ 2001 and 2002, Fed. R. Civ. P. 66, and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the “**Receiver**”), respectfully moves the Court for authorization, in substantially the form attached as **Exhibit 1**, to (i) sell certain real property free and clear of all liens,

claims, and encumbrances; and (ii) relieve the Receiver from certain provisions of 28 U.S.C. § 2001.

## INTRODUCTION

The Receivership Estate holds title to real property located at Lot #68 Woodlake Boulevard, Tazewell, Tennessee 37879 (the “**Tazewell Property**”), which is free and clear of any known liens and encumbrances. The Tazewell Property was obtained by the Receiver from a defendant in *Burton W. Wiand, as Receiver v. Stanley W. Mason, Jr., individually, Stanley W. Mason, Jr. and Doris A. Mason, as Trustees of the Stanley W. Mason, Jr. and Doris A. Mason Trust Agreement u/a/d September 24, 1998, and the Mason Family Limited Partnership*, Case No.: 8:10-cv-219-T-17MAP (M.D. Fla.), a “clawback” case brought by the Receiver, as part of the settlement of that matter. The Receiver has listed the Tazewell Property through a broker and has received an offer to purchase the Tazewell Property for \$45,000, which the Receiver believes represents a fair and reasonable price. In light of the relatively low value of the Tazewell Property, the Receiver has only obtained one appraisal to date, which concluded the property had an appraised value of \$47,000 (the “**Appraisal**”).<sup>1</sup> A copy of the Appraisal is attached hereto as **Exhibit 2**. The Receiver believes it is in the Receivership Estate’s best interests to proceed with the sale of the Tazewell Property without spending money on additional appraisals, and thus requests that the Court waive, or find that

---

<sup>1</sup> The Receiver previously advised this Court of a realtor’s estimate that the Tazewell Property was worth \$65,000 to \$70,000 in a motion to approve the Receiver’s settlement with the clawback defendants in December 2010 (Doc. 571). The Tazewell Property has been on the market now for over a year and has not received any offers to purchase the property besides the current offer to purchase the property for \$45,000. In light of the uncertain state of the real estate market, the Receiver believes this offer represents the current fair and reasonable price for the Tazewell Property.

the Receiver has substantially complied with, the procedures in 28 U.S.C. § 2001(b), which address the private sale of real property by a receiver.

The Appraisal the Receiver obtained was conducted by Kimberly Setsor of Setsor Appraisal Service, who is a disinterested appraiser, and the Receiver also seeks her *nunc pro tunc* appointment as appraiser pursuant to 28 U.S.C. § 2001. Indeed, the Receiver believes that, given the uniqueness of the Tazewell Property and the limited comparable sales, it is unlikely that additional appraisals would be materially different from the appraisal already obtained by the Receiver.

### **BACKGROUND**

On January 21, 2009, the Securities and Exchange Commission (“**Commission**”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC (“**Scoop Capital**”) and Scoop Management, Inc. (“**Scoop Management**”) and Relief Defendants Scoop Real Estate, L.P. (“**Scoop RE**”); Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the “**Order Appointing Receiver**”). (*See generally* Order Appointing Receiver (Doc. 8).) The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“**Nadel**”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454.) All of the entities in receivership are hereinafter collectively referred to as the “**Receivership Entities**.” Pursuant to the Order Appointing Receiver, the Receiver was directed to, *inter alia*, administer and manage the

business affairs, funds, assets, choses in action and any other property of the Receivership Entities.

### **The Tazewell Property**

After his appointment and pursuant to the authority granted by the Order Appointing Receiver, in relevant part the Receiver instituted actions against investors whose redemptions from Receivership Entities exceeded their total investment. One of these actions was brought against Stanley W. Mason, Jr., individually; Stanley W. Mason, Jr. and Doris A. Mason, as Trustees of the Stanley W. Mason, Jr. and Doris A. Mason Trust Agreement u/a/d September 24, 1998; and the Mason Family Limited Partnership (collectively, the “**Masons**”). On December 6, 2010, the Receiver and the Masons entered into a settlement agreement under which the Masons would, in part, transfer title of the Tazewell Property to the Receiver. The settlement was approved by this Court on December 13, 2010 (Doc. 573). The Receiver took possession of the property pursuant to a Warranty Deed executed by the Masons on December 14, 2010, and it was recorded with a Register of Deed in Claiborne County, Tennessee on January 11, 2011. The Receiver now seeks to sell the property by private sale and convey title by Receiver’s Deed, free and clear of all claims, liens, and encumbrances.

The Tazewell Property is an undeveloped, approximately one-half acre (103 feet by 108 feet) semi-wooded residential lot located in the Woodlake Golf Community in Tazewell, Tennessee (the lot is commonly referred to as #68 in the Woodlake Community). As indicated above, the Receiver acquired title to the property in late 2010 through the settlement of a clawback proceeding. The Tazewell Property has received no significant improvements since title was transferred to the Receiver, nor is it subject to any known liens

or encumbrances. Further, no claims have been filed in the Receivership which are connected in any way to the Tazewell Property.

### **The Receiver's Marketing Efforts and Offer to Purchase the Tazewell Property**

The Receiver engaged realtor Debbie Snyder of Lakeside Realty to list and actively market the Tazewell Property for sale. Ms. Snyder has represented numerous buyers and sellers of homes in the Woodlake Golf Community. The Receiver also marketed the property through his website, [www.nadelreceivership.com](http://www.nadelreceivership.com), in a specific "Assets for Sale" section. The property was listed for sale on February 16, 2011, for the price of \$45,000.00, which was determined based upon condition of the market and comparable properties for sale in the Woodlake Golf Community and surrounding area. A review of sales data attached as "**Exhibit 3**" shows that the proposed purchase price exceeds the average selling price of comparable properties.

The Receiver has received an offer from private citizens (the "**Purchasers**"), who have provided proof of funds in the form of a loan commitment letter, to purchase the Tazewell Property for \$45,000.00. The Receiver has accepted this offer, subject to the Court's approval. The Receiver has received no other offers to date even though, as noted above, the property has been listed for sale for approximately a year. The proposed sale is scheduled to close within thirty days of the approval of the sale of the Tazewell Property by the Court and is intended to be free of all liens, claims, and encumbrances. As such, the Receiver entered into a Lot/Land Purchase and Sale Agreement with Purchasers (the "**Agreement**"), a copy of which is attached hereto as "**Exhibit 4**". The Receiver believes that the proposed offer is reasonable in light of the current market conditions and the appraised

value of the property. Pursuant to the Agreement, the Receivership Estate will net approximately \$38,000.00 from the sale after deducting the commission and normal closing costs.

### **MEMORANDUM OF LAW**

#### **I. THE COURT HAS BROAD POWERS OVER THIS RECEIVERSHIP'S ADMINISTRATION**

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers. The Receiver believes that the sale of the Tazewell Property is in the best interests of and represents the best possible recovery for the Receivership Estate; the proposed sale would result in the recovery of approximately \$38,000.00 for the benefit of defrauded investors. The relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

A court imposing a receivership assumes custody and control of all assets and property of the receivership and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See*,

*e.g. Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006); *S.E.C. v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). The goal of a receiver charged with liquidating assets is to obtain the best value for the estate available under the circumstances. *Fleet Nat'l Bank v. H & D Entertainment, Inc.*, 926 F. Supp. 226, 239-40 (D. Mass. 1996), *citing Jackson v. Smith*, 254 U.S. 586 (1921). Further, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See e.g. Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997).

## **II. THE COURT HAS THE POWER TO DEVIATE FROM THE REQUIREMENTS OF 28 U.S.C. § 2001, AND THAT IS WARRANTED UNDER THE CIRCUMSTANCES HERE**

Pursuant to 28 U.S.C. § 2001, property in the possession of a receiver may be sold by private or public sale. 28 U.S.C. § 2001. Specifically, subsection (b) establishes the following procedures for a private sale of real property:

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. § 2001(b).

Notwithstanding the language of Section 2001(b), district courts are afforded wide discretion in overseeing the sale of real and personal property in equity receiverships. Any actions taken by the district court in the exercise of this discretion are subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to defrauded investors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

Consistent with this discretion, courts have allowed deviations from the requirements of Section 2001(b) to approve sales of real property in equity receiverships. *See S.E.C. v. Global Online Direct, Inc.*, Case No. 1:07-CV-0767-WSD, Order Granting Receiver's Mot. For Order Authorizing the Sale of Certain Property (N.D. Ga. 2009) ("The Court hereby relieves the Receiver from the provisions of 28 U.S.C. §§2001-2002"); *S.E.C. v. Stanley J. Kowalewski et. al.*, Case No. 1:11-cv-0056-TCB, Order Granting Receiver's Motion for Approval of Private Sale of Real Property (N.D. Ga. 2012) (finding compliance with 28 U.S.C. §2001(b) despite receiver not obtaining three appraisals for each property). These orders are attached hereto as "**Composite Exhibit 5**". At least one court authorized a receiver's private sale of real property under 28 U.S.C. § 2001 without requiring *any* appraisals. In *S.E.C. v. Billion Coupons, Inc.*, the receiver proposed that the court deviate from the appraisal requirements of 28 U.S.C. § 2001(b) and instead authorize the receiver to retain a licensed real estate broker to market and sell the property for the highest and best



price obtained. 2009 WL 2143531, \*3 (D. Hawaii 2009). Concluding that the proposed plan contained sufficient safeguards for maximizing the sales price, as well as an efficient process to minimize carrying costs and other expenses, the court granted the receiver's request to deviate from 28 U.S.C. § 2001. 2009 WL 2143531 at \*4. Further, this Court recently authorized the sale of real property in an equity receivership despite the receiver obtaining less than the three appraisals required under Section 2001(b). In *S.E.C. v. Patrick Kirkland et. al.*, the receiver requested that the court find substantial compliance with the appraisal requirements in Section 2001 based on a single appraisal and the uniqueness of the subject property. 2009 WL 1439087 (M.D. Fla. 2009). Citing the receiver's belief that the proposed sale was in the best interest of the receivership estate and that no benefit would be realized in obtaining additional appraisals, the court granted – over the defendant's objection – the waiver of the requirements of Section 2001(b). *Id.* at \*3.

Importantly, neither the receiver in *Kirkland* nor in *Billion Coupons* obtained both an appraisal and the services of a realtor in listing the property for sale, as the Receiver has done here, but still received court approval of their deviation from the Section 2001 requirements. Not only do the Receiver's efforts here exceed those in *Kirkland* and *Billion Coupons*, but full compliance with the statutory procedures enumerated in Section 2001(b) here would result in the unwarranted depletion of funds and resources of the Receivership Estate. Given the (1) uniqueness and undeveloped state of the Tazewell Property, (2) existence of a ready and willing buyer, (3) existence of an appraisal supporting the proposed sales price, and (4) the relatively low value of the Tazewell Property, the Receiver requests that the Court authorize deviation from the statutory requirements associated with the proposed sale of the

Tazewell Property. Such deviation is warranted as compliance would result in a disproportionate financial cost to the Receivership Estate.

As previously mentioned, the Receiver has obtained one appraisal that currently estimates the value of the Tazewell Property at \$47,000.00. Given the relatively low value of the Tazewell Property, the Receiver believes that obtaining additional appraisals would be unnecessary, as (1) the proposed sale price of the Tazewell Property is consistent with the value disclosed in the Appraisal, and (2) the costs of such appraisals would serve only to deplete funds from the proceeds of the proposed sale. Additionally, the proposed sales price is well within the range of sales of comparable property as shown in Exhibit 3. Finally, the sales price of \$45,000 is within two-thirds of the average appraised value as required by 28 U.S.C. § 2001(b). The Receiver is unaware of any claims to the Tazewell Property nor has he received any indication that any interested party plans to object to the proposed sale. Thus, the Receiver respectfully requests that the Court approve the proposed sale of the Tazewell Property and find that the Receiver has substantially complied with 28 U.S.C. § 2001(b).

### **III. PUBLICATION OF CONFIRMATION OF PRIVATE SALE UNDER § 2001(b)**

Pursuant to 28 U.S.C. § 2001, “[b]efore confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation.” The Receiver has identified the *Clairborne Progress* as a newspaper of general circulation in Tazewell, Tennessee, and has made arrangements to publish the terms of the proposed sale. The Receiver intends to publish notice of the sale in substantially the form attached as **Exhibit 6** (the “**Notice**”). 28

U.S.C. § 2001 also provides that the proposed sale cannot be approved if, under the conditions prescribed by the Court, a separate bona fide offer to purchase the Tazewell Property for at least 10% more than the proposed, published sale price is received. Thus, if no offer to purchase the Tazewell Property for \$49,500.00 is received in writing by the Receiver on or before 5:00 P.M. Eastern Time on the final day of publication of the proposed sale, the Receiver should be permitted to close the proposed private sale to the Purchasers.

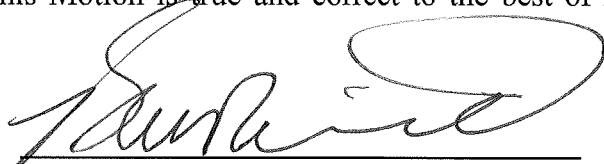
**WHEREFORE**, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 to (1) sell the Receivership's real property located in Tazewell, Claiborne County, Tennessee by private sale in accordance with the terms and conditions set forth in the Agreement attached hereto as Exhibit 2, (2) approve the appointment *nunc pro tunc* of appraiser Kimberly Setsor as appraiser under 28 U.S.C. § 2001(b), and (3) grant the Receiver authority to transfer the Tazewell Property free and clear of all claims, liens, and encumbrances if, by 5:00 P.M. Eastern Time on the tenth (10) day after the Notice is published in the *Clairborne Progress*, the Receiver does not receive a bona fide offer in writing for at least \$49,500.00.

**CERTIFICATE UNDER LOCAL RULE 3.01(g)**

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

**VERIFICATION OF RECEIVER**

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter, hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Court-Appointed Receiver

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 4, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants.

Arthur Nadel, Register No. 50690-018  
FCI BUTNER LOW  
Federal Correctional Institution  
P.O. Box 999  
Butner, NC 27509

**s/Gianluca Morello**

Gianluca Morello, FBN 034997  
Email: [gianluca.morello@wiandlaw.com](mailto:gianluca.morello@wiandlaw.com)  
Michael S. Lamont FBN 0527122  
Email: [mlamont@wiandlaw.com](mailto:mlamont@wiandlaw.com)  
WIAND GUERRA KING P.L.  
3000 Bayport Drive  
Suite 600  
Tampa, FL 33607  
Tel: 813-347-5100  
Fax: 813-347-5199

*Attorneys for the Receiver, Burton W. Wiand  
W. Wiand*